Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	
	)	
Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act Licensees and their Affiliates; and	)	MB Docket No. 07-29
	)	
Sunset of Exclusive Contract Prohibition	)	

COMMENTS OF VERIZON

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I. INTRODUCTION AND SUMMARY

The Commission should retain for a limited time the existing prohibition against cable operators' entering into exclusive contracts for cable-affiliated satellite programming in section 628(c)(2)(D) of the program access rules, and take certain additional steps to prevent the evasion of those rules.

Congress adopted the existing prohibition in the 1992 Cable Act as a limited remedial provision to address a problem unique to the cable industry. Because cable operators historically had exclusive local franchises, the larger multiple system operators had used their monopoly status to extract concessions from programming providers, whether in the form of ownership interests or exclusive contracts or both. These incumbent providers then used their control over

[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

popular programming to further entrench themselves by denying competing multichannel video programming distributors ("MVPD") attempting to enter the market access to that programming in order to handicap their ability to compete.[2]

In order to foster video competition in light of this unique history of abuse, Congress adopted a targeted remedial provision with the limited aim of preventing such anticompetitive practices until such time as sufficient competition developed.[3] As the Commission has put it, the exclusive contract prohibition was designed to break "the cable industry's 'stranglehold' over programming" that new entrants "need in order to provide a viable and competitive multichannel alternative to the American public."[4] The prohibition applies only to exclusive contracts between cable operators and vertically integrated programmers – not all exclusive contracts. *See* 47 U.S.C. § 548(c)(2)(D). Even as to that subset of contracts, the prohibition allows cable

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[2] *See, e.g., TV Communications Network, Inc., v. Turner Network Television, Inc.*, 964 F.2d 1022 (10th Cir.) (challenging TNT's refusal to sell its programming to competing cable operator), *cert. denied*, 113 S. Ct. 601 (1992); *Futurevision Cable Systems of Wiggins, Inc. v. Multivision Cable TV Corp.*, 789 F. Supp. 760 (S.D. Miss. 1992) (challenging refusal by The Learning Channel and ESPN to sell their programming to competing cable operator as part of alleged attempt to prevent overbuilders from entering the cable services market); *see also,* David Saylor, *Programming Access And Other Competition Regulations of The New Cable Television Law And The Primestar Decrees: A Guided Tour Through The Maze*, 12 Cardozo Arts & Ent LJ 321 (1994) (noting that section 628 was enacted in response to complaints from competing cable operators that existing remedies to address program access problems were "too limited, complex, and slow …").

[3] S.Rep. No. 102-92, at 28 (1991); H.R. Rep. No. 102-862, at 93 (1992) (Conf. Rep.).

[4] *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, 11 FCC Rcd 18223, ¶ 189 (quoting 138 Cong. Rec. H6540 (daily ed. July 23, 1992) (statement of Rep. Eckart)), *recon. denied in relevant part*, 11 FCC Rcd 20227 (1996), *remanded on other grounds, City of Dallas v. FCC*, 165 F.3d 341 (5th Cir. 1999); *see also Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order, 17 FCC Rcd 12124, ¶ 3 (2002) (noting that, in the absence of the exclusivity prohibition, vertically integrated programmers were likely to engage in behavior that "would result in a failure to protect and preserve competition and diversity in the distribution of video programming") ("*Extension Order*").

operators or vertically integrated programmers to enter exclusive deals when they can show to the Commission's satisfaction that such deals are in the public interest. *See id.* §§ 548(c)(2)(D), 548(c)(4). Further, Congress recognized that this prohibition should be in effect only so long as would be necessary to allow competition to take hold, after which time it would sunset. *See id* § 548(c)(5).

Today, competition to cable remains limited, and wireline video competition in particular remains rare.[5] However, that situation is changing. Verizon is spending billions of dollars to deploy a broadband network that features an exciting competitive video service called FiOS TV, which brings enormous benefits to consumers and the economy. As Verizon and other wireline providers begin offering competitive video service, they need access to the cable-affiliated programming that is the subject of the remedial provision enacted by Congress, including what the Commission has described as "must have" programming such as regional sports networks ("RSNs"). Although Verizon generally has been successful so far in obtaining that access, it has done so with the protections afforded by (and in some cases only by invoking) the program access rules, including the exclusive contract prohibition.

The program access rules in general, and the exclusive contract prohibition in particular, are critical to ensuring such access during the period that new entrants are entering the market and becoming established, after which time they can sunset and the market can be allowed to function without regulation. Allowing that prohibition to sunset at this juncture, however, would undermine the Commission's efforts to promote broadband deployment and encourage facilities-based video competition.

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[5] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, App. B, Table B-1 (2006) (reflecting that subscribership from competitors to cable, other than DBS providers, has either declined or remained flat over the last several years) ("*Twelfth Annual Report*").

Accordingly, as was the case in 2002, the existing exclusive contract prohibition adopted by Congress to remedy cable's past abuses "continues to be necessary," and should be extended. As described further below, the Commission also should take steps to protect against evasion of its rule.

II. DISCUSSION

A. Verizon's Deployment of FiOS TV Benefits Consumers

Verizon is committed to the continued deployment of broadband. Today, Verizon's advanced fiber network, known as FiOS, is available in 800 communities in sixteen states around the country. As of year end 2006, Verizon's FiOS network passed more than 6 million homes and businesses. The Company's target is to pass 9 million premises by year-end 2007.[6]

One of the key services Verizon offers over FiOS is a multi-channel video service – known as FiOS TV – that competes directly with the video service currently offered by incumbent cable operators. From the consumer's perspective, FiOS TV is designed to match or exceed both cable and satellite services in all key respects. Verizon's plan is to offer a robust lineup of digital channels, high-definition ("HD") channels, and advanced features, all at competitive prices. Currently, FiOS TV customers can choose from hundreds of digital video and music channels, more than two dozen HD channels, thousands of video-on-demand titles, as well as local broadcast channels, such as ABC, CBS, NBC, and Fox. At year-end 2006, Verizon offered video services to 2.4 million premises, nearly double the number of premises as at the end of the third quarter 2006, and had 207,000 FiOS TV customers, approximately 43% of whom were added in the fourth quarter alone. *Id.*

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[6] *See* Press Release, *Verizon's 4Q 2006 Results Cap Strong Year of Organic Growth in Wireless, Broadband, and Business Markets* (Jan. 29, 2007), *available at* http://investor.verizon.com/news/view.aspx?NewsID=813 ("*Fourth Quarter Results*").

Verizon's FiOS TV is bringing – for the first time in many places – meaningful head-to-head wireline competition to incumbent cable providers, which has resulted in important benefits for consumers in terms of greater video choice, reduced prices, and improved services. As the Commission recently found, in areas where two or more wireline video providers are competing, customers are likely to enjoy rates approximately 17 percent lower than customers in markets without this competition.[7] A recent economic report likewise observed that "[t]here is very little direct competition in the cable industry, but where there is, consumers generally see both lower prices and additional service offerings." Yale M. Braunstein, School of Information, University of California, Berkeley, *Expected Consumer Benefits from Wired Video Competition in California* at 2 (Apr. 2006). Verizon's entry into specific local cable markets bear out the consumer benefits of video competition.[8] For example, the American Consumer Institute cited "circumstantial evidence that cable operators have dropped price to coincide with market entry." The American Consumer Institute, *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas* at 7 (Mar. 2, 2006). According to its survey in Keller, Plano, and Lewisville, Texas, communities that had wireline-based competition for less than six months, "[s]ome consumers stayed with their incumbent provider and reported to have saved, on average, $26.83 per month off their average cable TV bill, as a direct result of competition." *Id.* at 2-3.

[7] *See Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, 21 FCC Rcd 15087, ¶ 3 (2006).

[8] *See, e.g.,* Sarmad Ali, "Cable Rate Increases Are Smallest in Years: Heightened Competition Offers Consumers Chance to Play One Provider Off Another; When to Bundle," *Wall Street Journal,* at D5 (Dec. 7, 2006) (reporting that "cable companies that are facing the early waves of phone-company competition are showing the most restraint in raising prices," noting that Cablevision, "which is facing threats from Verizon in much of its turf, has some of the lowest price increases in the business").

And in Sarasota and Manatee Counties, Florida, Comcast decided to not raise rates for the first time in a decade, following Verizon's entry in Manatee County and pending franchise negotiations in Sarasota County. "For them to not raise rates," one telecommunications analyst noted, "is historical."[9] In short, video competition works.

However, in order for wireline video competition to take hold, Verizon and other new video entrants need to be able to offer consumers an attractive programming line up. Accordingly, new entrants must be able to obtain both the most popular national and regional programming in the service area, particularly RSNs, and the inability to do so would handicap entrants' ability to compete to attract certain customers (*e.g.*, sports fans). Because the exclusive contract prohibition in section 628(c)(2)(D) ensures that new entrants will not be denied access to such programming as a result of exclusive contracts between the cable incumbents and vertically integrated programmers, retaining that prohibition for a time-limited period will facilitate the video competition the Commission is working diligently to encourage.

Up to this point, Verizon has had some success in reaching agreements with programming providers, including most vertically integrated programming providers, for the programming that it needs to compete. Verizon was able to reach deals in its first round of contract negotiations, however, against the backdrop of the existing exclusive contract prohibition, which limited vertically integrated providers' ability to deny Verizon access to programming. And even then, Verizon found it necessary to file one program access complaint in order to overcome a cable-affiliated programming provider's stonewalling. Going forward, there is every reason to believe that the next round of negotiations for renewal of Verizon's

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[9] Lauren Mayk, *A Cable TV Rate Shocker: No Boost,* Sarasota Herald-Tribune at A1 (Apr. 26, 2006).

programming deals could be more difficult, particularly if vertically integrated programming providers are permitted to deny Verizon access to needed programming altogether or to the HD versions of that programming, thus shielding their affiliated cable operators from more effective competition from Verizon.

B. <u>Consistent With Its Reasoning In Its 2002 *Extension Order*, The Commission Should Extend The Exclusive Contract Prohibition.</u>

Section 628 provides that the exclusive contract prohibition in the program access rules would sunset on October 5, 2002 unless the Commission determines that the prohibition "continues to be necessary to preserve and protect competition in diversity in the distribution of video programming." 47 U.S.C. § 628(c)(5). In 2002, when first faced with the need to determine whether to extend the prohibition, the Commission placed "substantial weight" on two factors in deciding that the exclusive contract prohibition "continues to be necessary": first, whether, in the absence of the exclusive contract prohibition, vertically integrated programmers would have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and program distributors using other technologies; and second, if so, whether such behavior would result in a failure to protect and preserve competition and diversity in the distribution of video programming.[10]

1. Incumbents Have the Ability to Deprive Competitors of Programming Necessary to Compete.

In its 2002 *Extension Order* the Commission found that access to vertically integrated programming by competitive video providers "continues to be necessary in order for these MVPDs to remain viable in the marketplace." *Id.* While acknowledging that the amount and diversity of programming available for distribution by video providers had "substantially

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[10] *Extension Order* ¶ 16.

increased since the enactment of the exclusivity prohibition" and that "the percentage of vertically integrated programming has declined," the Commission was persuaded that vertically integrated programming continued to constitute a sizeable portion of the most highly rated and widely distributed satellite-delivered prime time programming. *Id.* The Commission also found noteworthy that vertically integrated subscription premium networks, such as HBO and Cinemax, while not among the top programming services in terms of subscribership, "make an important contribution to an MVPD's revenue and profits." *Id.*

The Commission's findings remain valid today. Despite the continued growth of independent programming, vertically integrated programming continues to be vital to the success of new entrants and competitive video providers. In Verizon's case, approximately 32 percent of the more than 250 regional and national networks that comprise Verizon's FiOS TV service are vertically integrated with incumbent video providers. Nationwide, according to the Commission's most recent statistics, approximately 22 percent (116) of the 531 satellite-delivered national networks were vertically integrated with at least one cable operator in 2005.[11]

Vertically integrated programming also continues to be some of the most popular and most critical to a new entrant's competitive success. For example, six of the top 20 non-broadcast networks, as ranked by viewership, are vertically integrated with a cable operator, including The Discovery Channel (No. 1, Cox, Advance/Newhouse); CNN (tied for No. 4, Time Warner); TNT (tied for No. 4, Time Warner); TBS (tied for No. 9, Time Warner); TLC (tied for No. 15, Cox, Advance/Newhouse); and Headline News (tied for No. 18, Time Warner).[12]

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[11] *Twelfth Annual Report* ¶ 21.

[12] *Id.*; *id.* at App. C, Table C-1.

Outside of the most widely watched and available networks, premium programming also remains vertically integrated. For example, the HBO and Cinemax networks are affiliated with Time Warner. A new entrant needs the ability to offer customers such programming in order to compete successfully against an established video provider, as the Commission has previously found.[13]

The ability of vertically integrated programmers to disadvantage competitive video providers is particularly acute for regional programming – particularly regional sports programming – which is a key component of a competitive multichannel video service. As the Commission correctly observed five years ago, "the increased prominence of vertically integrated regional programming services, particularly sought-after and non-duplicable regional sports programming, strengthens the overall importance of vertically integrated programming to competitive MVPDs." *Id.* More recently, the Commission found that "an MVPD's ability to gain access to RSNs … can be [an] important factor[] in its ability to compete with rivals."[14]

Of the regional networks Verizon currently offers as part of FiOS TV, 80 percent are vertically integrated with cable operators.[15] Nationwide, according to the Commission's most current data, in 2005 there were 96 regional networks, including 37 RSNs, of which

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[13] *Extension Order* ¶ 32.

[14] *In the Matter of Applications for Consent to the Assignment and/or Transfer of Control of Licenses: Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors to Time Warner Cable Inc. (subsidiaries), Assignees; Adelphia Communications Corporation (and subsidiaries, debtors-in-possession), Assignors and Transferors to Comcast Corporation (subsidiaries), Assignees and Transferees; Comcast Corporation, Transferor, to Time Warner, Inc., Transferee; Time Warner, Inc., Transferor, to Comcast Corporation, Transferee,* 21 FCC Rcd 8203, ¶ 124 (2006) ("*Adelphia Order*").

[15] Although that figure will change if the Commission approves Liberty Media's acquisition of control of DIRECTV, RSNs in several key FiOS key markets will continue to be controlled by incumbent cable operators, including RSNs in Philadelphia, New York, Washington, and New England.

approximately 46 percent (44 regional networks and 17 regional sports networks) were vertically integrated with at least one cable operator.[16] Therefore, incumbent providers have considerable control over the vital regional programming that competitive upstarts need in order to compete effectively.

Regional sports programming, in particular, is extremely important programming (essential for some customers) that cannot be duplicated, as the Commission recently confirmed.[17] Subscribers insist on having access to their local sports teams, and thus competitive video providers would be seriously disadvantaged if a vertically integrated cable operator were lawfully permitted to withhold, or even threaten to withhold, an affiliated RSN.

The ability of vertically integrated programmers to withhold "must have" programming is enhanced by the fact that five of the top six cable operators (*i.e.,* Comcast, Time Warner, Cox, Cablevision, and Bright House) hold ownership interests in national programming networks.[18] It is this legacy of market power that Congress sought to remedy with its limited prohibition. Not surprisingly, these vertically integrated cable operators are Verizon's most significant competitors in FiOS markets, such as southern California (Time Warner), Texas (Time Warner

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[16] *Twelfth Annual Report* ¶ 22. This figure does not include SportsNet New York, which is a vertically integrated network launched in 2006. This New York Mets RSN is a joint venture of the Mets, Comcast, and Time Warner.

[17] *Adelphia Order* ¶ 124 (noting "the lack of adequate substitutes for regional sports programming" due to "the unique nature of its core component: RSNs typically purchase exclusive rights to show sporting events, and sports fans believe that there is no good substitute for watching their local and/or favorite team play an important game")(quoting *General Motors Corp. and Hughes Electronics Corp. Transferors, and The News Corp. Lt'd, Transferee,* 19 FCC Rcd 473, ¶ 133 (2004)).

[18] *Twelfth Annual Report* ¶ 15.

and Cox), New York/New Jersey (Comcast, Time Warner, and Cablevision), the mid-Atlantic region (Comcast and Cox), and Pennsylvania (Comcast).

2. Incumbents Have an Incentive to Deny Competitors' Access to Valuable Programming.

In examining the incentive of vertically integrated programmers to favor their affiliated cable operators over competitive video providers, the Commission has sought to answer two questions: (1) whether cable operators continue to exercise control in the market by virtue of "the number of subscribers they serve and their affiliations with satellite programmers"; and (2) whether there continues to exist "an economic rationale for vertically integrated programmers to engage in exclusive agreements with cable operators that will cause [] anticompetitive harms."[19] The answer to both questions continues to be "yes."

Cable operators continue to serve the overwhelming majority of video subscribers.[20] Post-Adelphia, the four largest cable operators serve more than 53 percent of all video subscribers;[21] by contrast, when the Commission extended the exclusive contract prohibition in 2002, the four largest cable operators served 48 percent of video subscribers.[22]

The largest cable operators also continue to hold significant stakes in the available satellite programming. Whereas in 2002 only three of the largest six cable operators owned

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[19] *Extension Order* ¶ 35.

[20] *Twelfth Annual Report* ¶ 8 (noting that 69.4 percent of video subscribers received video programming from a franchised cable operator as of June 2005).

[21] *Id.* at App. B, Table B-3 (percentage calculated by adding the percentage of subscribers formerly served by Adelphia to those served by Comcast, Time Warner, Cox, and Charter).

[22] *Extension Order* ¶ 21.

satellite programming vendors, today five of the largest six cable operators own programming.[23] In 2005 Comcast, Time Warner, Cox, Cablevision, and Bright House – Verizon's largest competitors – collectively held interests in all of the national and regional networks affiliated with multi-system cable operators.[24]

The "economic rationale" for vertically integrated programmers to enter exclusive agreements with incumbent providers in order to harm new entrants also remains. Competitive wireline video providers such as Verizon today make up a sufficiently small share of the marketplace that a withholding strategy could be profitable for the vertically integrated cable programmer. Certainly, withholding programming would have the effect of curbing the growth and penetration of video delivery by competitive providers, thereby limiting the downward pricing pressure and other benefits of competition that new entrants are bringing to consumers. As a result, consumers would suffer if section 628(c)(2)(D) were allowed to sunset at this time – before competition is given a chance to take hold to an extent that would limit the likelihood of this type of withholding strategy – and vertically integrated programmers were permitted to enter into exclusive contracts with cable operators.

The incentives for operators to enter into exclusive contracts or engage in other anticompetitive conduct is underscored by recent events in the marketplace.[25] For example, Comcast is reportedly close to signing a deal that would give it full control over the rights to air

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[23] *Compare Extension Order* ¶ 18, with *Twelfth Annual Report*, App. C, Table C-1 & Table C-3.

[24] *Twelfth Annual Report* at App. C, Table C-1.

[25] *Extension Order* ¶ 55 (noting "evidence based on market experience that a sunset of the exclusivity prohibition would provide incumbent cable operators with an economically sustainable mechanism for depriving developing competitive program distributors of programming content," which, according to the Commission, confirmed that "competitors will seek, and can acquire, exclusivity to advantage themselves in the competitive struggle").

Boston Celtics basketball games, which would give it "strong leverage over its competitors in the region," including Verizon.[26]

Likewise, Verizon was compelled to file a complaint against rival Cablevision and its vertically integrated programming subsidiary, Rainbow Media Holdings, LLC ("Rainbow"), in order to obtain access to regional sports networks in the New York City metropolitan area and New England, which Rainbow had refused to sell Verizon.[27] Although the complaint was eventually settled, the case illustrates the efforts of cable operators and their vertically integrated programmers to forestall competition from new entrants such as Verizon.

Verizon's experience with Rainbow also highlights another difficult problem that competitive video providers increasingly face – obtaining access to HD programming. In the case of Rainbow, although the company eventually entered into a distribution agreement with Verizon to sell the standard definition version of its programming to Verizon, Rainbow declined to make available its HD feeds for certain regional sports programming, allegedly based on the fact that the HD feed is terrestrially delivered. At the same time, as part of its advertising efforts in the metropolitan New York City area, Cablevision trumpets the fact that it offers more local sports in HD than its competitors.

This approach illustrates the incentive and ability for vertically integrated programmers to evade the program access restrictions by moving some or all of their programming – and in particular the HD feed of that programming – to terrestrial delivery. The Commission can and

[26] Keith Reed, *Comcast Shooting For Celtics: TV Deal Would Give It Leverage Over Rivals,* Boston Globe, Feb. 27, 2007, at C1.

[27] *See Verizon Telephone Companies and Verizon Services Corp. v. Cablevision Systems Corp. and Rainbow Media Holdings, LLC,* Program Access Complaint, File No. CSR-7010-P (filed March 20, 2006).

should prevent vertically integrated programmers from evading the exclusive contract prohibition in this manner.[28] In particular, the Commission should promptly curb the ability of cable operators to evade the existing prohibition by shifting the HD feed of vertically integrated cable programming that is otherwise transmitted by satellite to terrestrial delivery. The Commission should recognize that programmers cannot artificially carve up their programming into different "feeds" – some of which are subject to the protections of the program access rules, and others of which are not. In particular, they should not be permitted to draw such lines in order to deny competitive video providers access to the increasingly essential HD versions of programming, any more than they should be permitted to only provide a black-and-white version of their programming or only pictures, but no sound. Instead, the Commission should recognize that when the program access rules speak of programming, they refer to all feeds of that programming regardless of whether some forms of that programming may be delivered via a different medium. Thus, the Commission should require vertically integrated providers to make available all "feeds" of any programming subject to the program access rules, including in particular both standard and high definition versions of such programming no matter how delivered.

[28] *See* 47 U.S.C. § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions"); 47 U.S.C. § 303(r) (one of the general powers of the Commission is to "make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter"); *see also United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (noting Commission's authority to take steps that are "reasonably ancillary to the effective performance of the Commission's various responsibilities" and that further the purposes of the Act); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1183 (D.C. Cir. 1989)(upholding Commission's authority to reinstate syndicated exclusivity rules for cable television companies as ancillary to the Commission's authority to regulate television broadcasting).

Consumers increasingly crave HD programming and complain vigorously when they receive entertainment and local sports programs only in standard definition, particularly when they know that other competitors offer access to that programming in high definition.[29] When cable operators deny access to sought-after HD programming, competitive video providers are put at a severe competitive disadvantage. The Commission has recognized that new entrants are "significantly harmed if ... denied access to popular, vertically integrated programming for which no substitute exists."[30] Therefore, the Commission should not permit vertically integrated programmers to evade the program access rules simply by moving parts of programming – including in particular the HD feed – to terrestrial delivery.

C. **The Commission Should Modify Its Program Access Complaint Procedures By: (1) Establishing A Firm Deadline By Which Such Complaints Must Be Resolved; And (2) Adopting "Standstill" Rules For Renewal Disputes That Result In The Filing Of A Program Access Complaint.**

Verizon has two proposals in response to the Commission's request for comment "on whether and how our procedures for resolving program access disputes under Section 628 should be modified."[31] First, Verizon proposes that the Commission establish a firm deadline by which

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[29] *See* Lehman Brothers Cable & Satellite Communications Industry Over, *High Definition TV: The Next Arms Race*, at 1 (March 21, 2007) (noting that HD "will become the next key battleground in the video war as it evolves into the staple resolution of picture quality in US television homes …"); Wayne Karrfalt, *Programmers Ramp Up To Meet HD Demand,* Multichannel Newswire (Feb. 26, 2007) (noting DirecTV's plan to carry 100 national HD channels by the end of 2007, while Comcast is adding more linear HD channels, including HD programming from its owned networks, such as Versus and Golf Channel); Frank Ahrens, *Which Comes First – The Programming or the Sets,* Washington Post, at F04 (Jan. 21, 2007) (attributing increase in prime-time ratings for network television to the fact that most of such programming is in HD).

[30] *Extension Order* ¶ 34.

[31] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section*

program access complaints must be resolved. Because access to programming is of critical importance to a video provider seeking to compete, program access disputes can and should be resolved promptly by a date certain after the filing of a complaint.

Under the current program access regime, the Commission has established "goals" for resolving program access complaints depending upon the nature of the complaint: five months for complaints alleging denial of programming, and nine months for all other program access complaints, such as price discrimination cases.[32] While these goals are laudable, the Commission should adopt rules establishing a firm deadline of five months by which all programming access complaints must be resolved; such a deadline would ensure that disputes are resolved in a timely manner to the benefit of competition and subscribers alike.

Second, the Commission should adopt rules to ensure continued access to programming during the pendency of any complaint that has been filed with the Commission alleging a violation of the program access rules in connection with the renewal of an existing distribution agreement. Specifically, the Commission should adopt a rule implementing a "standstill" requirement that would preserve the status quo until the program access complaint has been resolved. Such a requirement would ensure that the customers being served by the video provider alleging a violation of the program access rules can continue to enjoy the programming they are currently receiving while the Commission considers the merits of the provider's allegations.

628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition, Notice of Proposed Rulemaking, 22 FCC Rcd 4252, ¶ 13 (rel. Feb. 20, 2007).

[32] *Id.* (citing *Implementation of the Cable Television Protection and Competition Act of 1992: Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage,* Report and Order, 13 FCC Rcd 15822, ¶ 1.41 (1998)).

A "standstill" requirement would help deter misconduct by vertically integrated programmers as well as protect consumers during the pendency of a program access complaint. A vertically integrated programmer would not be harmed by such a requirement because it would only have to abide by the terms of an agreement it voluntarily negotiated and would only have to do so for a limited time, particularly if the Commission were to adopt firm deadlines for the resolution of program access complaints, as Verizon has proposed.

III. CONCLUSION

For the foregoing reasons, the Commission should extend the prohibition in section 628(c)(2)(D) and should modify its program access complaint procedures by adopting Verizon's proposals.

Respectfully submitted,

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